

M E M O R I A L

F O R

ROBERT ARTHUR Merchant in Irvine;

A G A I N S T

Mess. HASTIE and JAMIESON Merchants in Glasgow.

ALTHOUGH the question between the memorialist and Mess. Hastie and Jamieson has been frequently under your Lordships consideration, yet, as in judging of the points at present in controversy, it may be necessary to have in view the different facts which gave rise to the competition, the memorialist shall endeavour to resume these as shortly as possible, in order to save the Court the trouble of resorting to the former papers.

Archibald Dunlop and David Ralston having settled as merchants in Virginia, and for several years carried on trade there in partnership; James Dunlop merchant in Glasgow, being a correspondent of theirs, furnished them with considerable cargoes of goods. In return for these, they stood engaged to send cargoes from Virginia consigned to him; but being deficient in their consignments, they became debtor to him in 1763 for a balance of about L. 5500 Sterling, for L. 5000 of which they accepted bills to him in 1764, and being jointly and severally bound for the debt, the separate effects of either became liable to be attached for it.

In the beginning of 1763, Archibald Dunlop, leaving his partner Ralston in Virginia, came to Glasgow, where he remained till August 1764.

The above-named James Dunlop being debtor to the memorialist Robert Arthur for two several sums of L. 2632: 6: 6 and

A.

L. 700

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ag.
Hastie and Jamieson

L. 700 Sterling, he did, in February 1754, bring an action against him in this Court for payment.

Upon this depending action he used arrestments in the hands of sundry persons debtors to the said James Dunlop, and, among others, in the hands of the said Mess. Archibald Dunlop and David Ralston merchants in Virginia.

Afterwards, in July 1764, the memorialist having obtained decret against the said James Dunlop for payment of the sums due to him, and thereafter brought an action of forthcoming against the said Mess. Dunlop and Ralston upon the arrestments used in their hands, he, on the 22d and 25th January 1766, obtained a decree against them for payment of as much of the sums arrested in their hands and indebted by them to the said James Dunlop, as would satisfy and pay him of the aforesaid sums due to him by the said James Dunlop.

In January or February 1763, while Archibald Dunlop was in Scotland, he purchased and sent out to Virginia, from Glasgow, a cargo of goods; and the usual credit given for such goods, in point of time, being about sixteen months, the price of this cargo became due whilst Archibald Dunlop continued in Scotland, and he accordingly paid it. In like manner having, in June 1764, purchased at Glasgow another cargo from different persons, also upon credit, he accepted bills for the same, and which bills were afterwards, in part paid, after his return to Virginia.

Before returning to Virginia, Archibald Dunlop having an intention, as far as he could, to disappoint the creditors of Mess. Dunlop and Ralston of the payment of their lawful debts, and to prefer such new creditors as already had lately given credit, or should give him credit, or furnish him goods, he, 8th August 1764, entered into a private contract with Mess. Robert Hastie and James Jamieson merchants in Glasgow, whereof the tenor follows: " The said Robert
 " Hastie and James Jamieson have become bound &c. to send to
 " and furnish the said Archibald Dunlop at Cabinpoint, with goods
 " and merchandise from Glasgow, as near as possible to the schemes
 " of goods which the said Archibald Dunlop shall send from Cabin-
 " point to Glasgow, and that for the space of years from
 " and after the date hereof; for which goods so to be sent from Glas-
 " gow, the said Robert Hastie and James Jamieson are to be allow-
 " ed commission at the rate of $2\frac{1}{2}$ per cent. And on the other hand,
 " the said Archibald Dunlop binds and obliges him, his heirs, &c.
 " to

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“ to remit to the said Robert Hastie and James Jamieson, at Glas-
 “ gow, the value of whatever goods shall be shipped by them on
 “ his account, according as the said value shall be ascertained by the
 “ said Robert Hastie and James Jamieson their accompt-books, with-
 “ out farther proof, so as the said Robert Hastie and James Jamieson
 “ may be enabled to pay the value of the said goods to the sellers or
 “ furnishers thereof, and that from time to time as the same shall
 “ become due : And in case the said Archibald Dunlop shall fail to
 “ make the foresaid remittances timeously, so as to discharge the
 “ prices of the goods to be sent out to him when the same shall fall
 “ due, then he binds and obliges himself and his forefaids to pay to
 “ the saids Robert Hastie and James Jamieson, their heirs, &c. the
 “ lawful annualrent of the price of the said goods, and that from
 “ the time the same shall become due to the furnishers, until pay-
 “ ment. Further, the said Archibald Dunlop binds and obliges
 “ himself and his forefaids, that whatever tobacco he shall ship for
 “ Clyde from this date, during the foresaid space of years,
 “ shall be consigned by him to the said Robert Hastie and James Ja-
 “ mieson fore sale, and which they hereby oblige themselves to dis-
 “ pose of to the best advantage ; for which, by express agreement,
 “ they are to be allowed commission at the rate of 12 s. 6 d. Sterling
 “ for each hoghead of tobacco, clear of all charges : And they oblige
 “ themselves to account to the said Archibald Dunlop for all allow-
 “ ances on the said tobacco that may be got at the King’s scale ; as
 “ also for the allowance of L. 10 each hoghead, granted by law, at
 “ the price the same shall be sold for ; and to apply the neat pro-
 “ ceeds of all the tobacco to be consigned and sold as above to the
 “ credit of the said Archibald Dunlop his accompt, for the goods to
 “ be sent out to him by the saids Robert Hastie and James Jamie-
 “ son, as aforesaid.”

Soon after entering into this contract, Archibald Dunlop returned
 to Virginia.

In spring 1765, Mess. Hastie and Jamieson sent out some goods by
 two ships called *the Elliot* and *the Peggy*, amounting together in
 value to L. 647 : 12 : 3 Sterling ; and which goods being furnished
 on the usual credit of sixteen months, the returns for them could not
 be due by Archibald Dunlop sooner than the middle or rather not
 till towards the end of the year 1766.

In July 1765, either before the arrival in Virginia of the last-
 mentioned goods, or at least more than a year before the price of
 them became due, and long before they could be sold or turned
 into cash by Archibald Dunlop, he sent off from Virginia a vessel
 called

called *the Betsey*, David Conkie master, with a cargo of tobacco, value above L. 3000 Sterling, all his own property, consigned to Mess. Hastie and Jamieson; and containing also more tobacco and goods belonging to others, consigned to different persons on freight to be paid to Archibald Dunlop owner of the vessel, or Conkie the master employed by him. The memorialist having received intelligence of this vessel being on her voyage from Virginia to Clyde, he resolved to attach them; and having for that purpose obtained letters of arrestment, together with the concurrence of the Judge-admiral, he did accordingly, of this date, arrest both the vessel and cargo in the hands of Conkie the master, immediately upon their arrival in the harbour, and before they had been reported at the customhouse.

Aug 26.
1765.

Mess. Harries, Cochran, and Company, merchants in London, being also creditors of Dunlop and Ralston, used the like arrestments in the hands of Conkie the shipmaster, but their arrestments were several days latter than those of Mr. Arthur. Upon their arrestment they brought a process of forthcoming; but in this action Mr. Arthur appearing for his interest, and claiming a preference upon his prior arrestments Mess. Harries, Cochran, and Company, agreed to his being preferred to them.

That Mess. Hastie and Jamieson might get possession of the ship and freight, and of that part of the cargo which was consigned to them, they, in name of Dunlop and Ralston, applied for letters of loosing the arrestments in the hands of Conkie the shipmaster, and upon their finding the father of Mr. Jamieson cautioner in the loosing, the arrestments were accordingly loosed in the usual form; and thereupon Conkie delivered up the ship and whole cargo to Mess. Hastie and Jamieson the consignees and correspondents of Archibald Dunlop.

Arrestments were thereafter used in the hands of Mess. Hastie and Jamieson both by the memorialist and by the afore said Mess. Harries, Cochran, and Company, and a process of multiple-poin ding being brought by all the arrestees, and coming before the Lord Pitfour Ordinary, the matter resolved into a competition between the parties upon their respective interests and demands.

Mess. Hastie and Jamieson, willing, as it would appear, to aid Archibald Dunlop in his design of disappointing the payment of his debts due to the memorialist and the other creditors of Dunlop and Ralston, did pretend to have right to the ship *Betsey* and her freight, and that part of her cargo consigned to them by virtue of their contract in August 1764, above stated, and the consignment by bill of loading made by him to them. On the other hand, the memorialist insisted

insisted for preference, upon the ground of his having attached by legal diligence the effects in question, while the property thereof stood vested in his debtor, and before any delivery or transference of property to the consignees was made or completed.

It is unnecessary to resume at any length the various arguments used by either party in support of their several claims. The Lord Pitfour Ordinary, upon advising memorials, did, of this date, pronounce the following interlocutor: "Having advised this memorial, Feb. 17. 1768
" with the memorial for Mess. Hastie and Jamieson, and considered
" the letters from Archibald Dunlop to Mess. Hastie and Jamieson,
" and other writs produced, finds that there appears no sufficient
" evidence that the said Archibald Dunlop was divested of the
" property of the ship or cargo in favours of Hastie and Jamieson;
" and consequently that the same was liable to be affected by the
" diligence of his creditors; and prefers Robert Arthur upon his
" arrestment; and decerns in the preference, and against the raisers
" of the multiple-poiding for payment accordingly." And to this interlocutor his Lordship, by two other interlocutors of the 6th and 19th July 1768, adhered.

Against these interlocutors of the Lord Ordinary, Mess. Hastie and Jamieson reclaimed; but upon advising the petition with answers, your Lordships, 29th November 1768, refused the desire of the petition, and adhered. Nov. 29. 1768.
Against this interlocutor Mess. Hastie and Jamieson presented a reclaiming petition, in which they prayed to be allowed a proof of the practice of merchants in similar cases; which petition being answered by the memorialist, your Lordships, by interlocutor 8th February 1769, allowed Mess. Hastie and Jamieson to give in a particular condescendence of what they averred to be the practice of merchants in cases of a similar nature with the present. A condescendence was accordingly given in, the particulars of which need not be here resumed; but, upon advising it with answers and replies, your Lordships, 4th August 1769, pronounced an interlocutor refusing to allow any proof, and superseding advising of the cause till the 15th November then next.

Against this interlocutor Mess. Hastie and Jamieson preferred another reclaiming petition, which being answered by the memorialist, your Lordships, 2d March 1770, pronounced an interlocutor adhering to your last interlocutor, and refusing to allow any proof; and having at the same time resumed the consideration of the cause itself, your Lordships adhered to your former interlocutor, of date 29th November 1768.

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From these interlocutors of your Lordships Mess. Hastie and Jamieson appealed to the House of Peers; and the interlocutors of both the Lord Ordinary and of your Lordships have been above more particularly stated, in order that the variation made upon them by the judgment of that Honourable House might more clearly appear.

Upon the 10th April, the House of Lords, after hearing counsel, pronounced the following judgment: "It is ordered and adjudged by the Lords spiritual and temporal in parliament assembled, That the interlocutors of the 17th of February, 2d and 19th of July, 29th of November 1768, and 2d March 1770, so far as they relate to the cargo, be reversed; and it is hereby declared, That the appellants have a special property therein preferable to the respondent's arrestments: And it is further ordered and adjudged, That the said interlocutors, so far as they relate to the ship, and all the other interlocutors complained of, be affirmed."

At the end of last session, when your Lordships pronounced a final judgment, nothing remained for the memorialist but to extract the decree. In order to prevent this, Mess. Hastie and Jamieson thought proper, upon the 6th March, in their own names, and in that of David Conkie, to give in a representation to the Lord Ordinary, setting forth, *imo*, That Mr Arthur's only ground of claim against Archibald Dunlop was a decret obtained against him in absence in this Court, and that the grounds and vouchers thereof must be produced before this decret could be allowed to go out; *2do*, That there was no ascertainment of the extent and value of the subjects arrested, which however must necessarily be done before any effectual decree could be extracted: And therefore praying the Lord Ordinary to appoint Mr Arthur to produce the grounds and vouchers of his decret against Dunlop, and to condescend upon the manner in which he proposed to ascertain the extent and value of of the subjects arrested; and in the mean time to stop extract. The Lord Ordinary appointed this representation to be answered against June, and in mean time stopped extract.

At the beginning of this session, the judgment of the House of Peers having been produced in Court, your Lordships, upon a petition from the memorialist, remitted the cause to the Lord Ordinary, with power to him to do therein as he should find just.

In consequence of this remit, the cause was inrolled before the Lord Ordinary; and the memorialist contended,

imo, That although the judgment of the House of Lords had, in consideration of the effect given to bills of loading in England, and other

other trading countries, reversed the interlocutors of this Court, in so far as respected the cargo consigned by bill of loading to Hastie and Jamieson, yet in every other respect it had affirmed them, and that therefore he was clearly intitled to an immediate decret for the ship, furniture, provisions, lumber, and the whole freight.

2do, That although the judgment of the House of Lords had declared the consignees to have a special property in the cargo contained in the bill of loading in their favours, preferable to Mr Arthur's arrestments, yet that can extend no farther than to the amount of the sums they were in advance and bound for at the time of the arrestment; and that if the proceeds of the cargo were more than sufficient to discharge those debts, the surplus must be paid to him: And further, with regard to the debts in which they only stood bound for Archibald Dunlop at the time of Mr Arthur's arrestments, that if before these debts became due other cargoes arrived sufficient to pay them, then such cargoes must accordingly be applied in payment thereof, and not the cargo attached by the memorialist.

3tio, With respect to the grounds and vouchers of his decret against Archibald Dunlop, he observed, That there was in process produced by the above-mentioned Mess. Harries, Cochran, and Company, a bill drawn by the above-mentioned James Dunlop upon and accepted by Mess. Dunlop and Ralston in 1763, for the sum of L. 2000 Sterling: That this bill, it was true, stands indorsed to the said Mess. Harries, Cochran, and Company, but that it was at the same time an indisputable fact, that this indorsation was made by James Dunlop, within less than sixty days of his notour bankruptcy; and that the memorialist having arrested both in the hands of Harries, Cochran, and Company the indorsees, and in the hands of Dunlop and Ralston the accepters, he had an unquestionable right to have this indorsation reduced upon the act 1696; and to found upon the bill, as in so far a good and sufficient voucher of his decret against Dunlop and Ralston.

4to, With respect to the ascertaining the extent and value of the subjects at the time of the arrestments, Mr Arthur observed, That although he had a decret of preference, final three years ago, with respect to the extent of the said preference, yet he was still willing to restrict his demand against them to the sum of L. 3023:10:4 Sterling, being the amount of the value and real proceeds of the ship Betsey and her freight, and that part of her cargo consigned by bill of loading to Hastie and Jamieson, conform to an abstract thereof taken from the accompt-current betwixt Archibald Dunlop and Mess. Hastie and Jamieson, produced by themselves in process,

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with annualrent of the said sum from 23d April 1766, being the latest date at which any of the articles was payable. With respect to this last particular, it was further observed, that the aforesaid accompt-current, together with the whole vouchers thereof, the letters of correspondence, and other papers relative thereto, had been, since last session, taken away by Mess. Hastie and Jamieson, and were not yet reproduced in process; but it was insisted, that they should be ordained immediately to replace them. And, in the mean time, it was observed, that there was a just and accurate abstract from their said accompt, which had been in process for three years before, which had been again and again referred to, and founded upon, and the accuracy of which had never either been denied or disputed.

July 3.
1770.

With respect to the third particular just now mentioned, Mess. Harries, Cochran, and Company, having appeared by their counsel, and acknowledged, that the indorsation of the L. 2000 bill was truly granted to them in security of anterior debt, within sixty days of James Dunlop's bankruptcy, in terms of the act 1696, and having therefore agreed that the indorsation be reduced, on Robert Arthur's being preferred to the sum in the bill upon his arrestments, the Lord Ordinary, upon the 3d July 1770, pronounced the following interlocutor: " Having considered what is above represented, " and in respect of the acknowledgment and consent on the part " of Mess. Harries, Cochran, and Company, finds the indorsation to them of the L. 2000 bill, accepted by Dunlop and Ralston " to James Dunlop, reducible at the instance of the said Robert Arthur the arrester, upon the ground above stated; and reduces the " same accordingly; and decerns; and appoints parties procurators " to be ready to debate at next calling upon the import of the judgment of the House of Peers, and other points of the cause."

July 5.
1770.

Thereafter, at a calling, of this date, before the Lord Ordinary, the memorialist insisted, That as he had now clearly supported his decret of forthcoming to the extent of the principal and interest due upon the above-mentioned bill for L. 2000, he was intitled to demand an interim-decret for the acknowledged value and neat proceeds of the ship, freight, provisions, and lumber belonging thereto; and he further insisted, that the accompt-current, together with the vouchers thereof taken from the process, should be reproduced, and that the judgment of the House of Lords should be applied with respect to the cargo in the manner formerly contended.

Mess. Hastie and Jamieson agreed to the Lord Ordinary's pronouncing an interim decret for L. 580 Sterling, being the price of the ship, after deduction of L. 20 paid for insurance; but with respect to the freight

freight, lumber, provisions, and cargo, contended, that Mr Arthur had no title to them, as neither falling within his arrestment, nor the intent and meaning of the judgment of the House of Peers.

The Lord Ordinary thereupon pronounced the following interlocutor: " Having considered the debate, of consent, decerns against Mess. Hastie and Jamieson the raisers of the multiple-pounding, for payment to the said Robert Arthur of the foresaid sum of *L.* 580 Sterling: Ordains the procurator for the said Mess. Hastie and Jamieson to reproduce the vouchers of their accompt, and other productions formerly made by them, betwixt and this day se'ennight, and appoints both parties procurators to prepare and give in memorials upon the following points, *viz.* 1st, with respect to the freight, how far the same falls under Robert Arthur's arrestment; and, 2^{dly}, with respect to the *cargo* received by Hastie and Jamieson after the arrestment in their hands, how far they are bound to apply the same in payment of the sums for which they stood bound on account of Archibald Dunlop, at the time of said arrestment, but which did not become due till after the receipt of the said cargo; and that within fourteen days." And thereafter his Lordship was pleased to make a *visandum* with the cause to your Lordships, and to ordain both parties to print and give in memorials.

In obedience to this appointment, the following memorial is humbly offered upon the part of Mr Arthur; and, as there are two points upon which parties have been directed to argue, so this memorial will properly divide into two distinct branches; the one respecting the ship, together with the lumber, provisions, and freight thereof; the other respecting the application of the judgment of the House of Lords to the cargo consigned by bill of lading to Mess. Hastie and Jamieson.

Before proceeding to particulars, the memorialist must beg leave to observe, That the principle upon which the consignees have been preferred to the cargo in question, is admitted to be contrary to the common received principles of law, with regard to the transference of property. In general, no principle seems better established than that in order to transfer the property of moveables, besides the will, actual delivery is absolutely necessary. This is the established law of England as well as of Scotland; and, as it is believed, of every other country.

The strict maxims of law, however, must give way to the more enlarged principles of commerce, and the local customs

Burrow's
Reports,
Vol. II. p.
887.

local customs of particular countries must yield to the general law of commercial nations. To use the expressions of a GREAT JUDGE, "The maritime law is not the law of any particular country, but the general law of nations: *Non erit alia lex Romæ, alia Athenis; alia nunc, alia post hac; sed et apud omnes gentes et omni tempore, una eademque lex obtinebit.*"

For the utility of commerce, the above-mentioned principle, with regard to the transference of property, has been departed from, in the case of foreign consignments. A bill of lading is now held before actual delivery of the cargo to transfer to the consignee a *special property* therein, to the extent of the debt due to him by the foreign merchant, and for the payment of which the consignment is made. The bill of lading is all the possession that can be delivered till the ship comes home; and it gives to the holder such a *special property* to the extent of his debt, as to exclude the legal attachment of the other creditors of the consigner.

As it is not by the actual delivery of the goods, so there appear two circumstances by which the *special property* of the consignee seems to be constituted. The *first* of these is the possession of the bill of lading, showing the will and destination of the consigner; and the *second* is, the consignee's being the lawful creditor of the foreign merchant. To suppose, that a merchant residing abroad might withdraw his effects from the legal execution of all his creditors, by consigning them to trustees or confident persons, would be a doctrine as pernicious as it is absurd and preposterous.

In a question, therefore, with a creditor of the consigner attaching the subject consigned, the right of the consignees must be founded upon their being just and lawful creditors, and upon their holding, in their possession the bill of lading.

The delivery of the bill of lading is a kind of symbolical delivery of the cargo, and the terms of it must therefore determine the extent of the *special property* of the consignee. However great the extent of the debt due to the consignee, his *special property* must be limited to the subject conveyed to him by the bill of lading. And, on the other hand, however extensive the consignment, the *special property* of the consignee therein must be limited to the extent of the debt which is due to him.

In examining, therefore, the extent of the right of consignees, in a question such as the present, with the creditors of the consigner, it is, in the *first* place, necessary to determine the bounds of the consignment,

ment, as ascertained by the bill of loading ; and, in the *second* place, to inquire into the extent of the debt due to the consignee. As to the particulars not consigned by the bill of loading, there will be no occasion for making any inquiry concerning the extent of the consignee's debt, because these must be considered as remaining subject to the common and established rules of law with regard to property.

The principles now laid down seem not only clear in themselves from the nature of the thing, but farther appear, in the humble apprehension of the memorialist, to have been the very principles upon which the above-recited judgment of the House of Lords has proceeded. The judgment of that Honourable House has declared the consignees to have a *special property* in the cargo, which is the subject consigned by the bill of loading, and has in so far reversed your Lordships decree, but has affirmed that decree in so far as respects the ship itself and every other particular.

Independent of the cargo, the particulars now in dispute are, the ship's furniture and lumber, the remainder of biscuit and other provisions on board, and the freight. None of these are mentioned in the bill of loading, which simply bears the consignment of the cargo. As to the ship's furniture and lumber, they are properly to be considered as parts of the ship itself, and must necessarily be held in the same situation with it. The remainder of biscuit and provisions must, it is apprehended, be considered as in like manner exclusive of the cargo, and therefore, not a part of the consignment. The provisions were not put aboard to be carried home to the consignees, but to support the crew during the voyage ; and if they had been totally consumed, it never would have been considered as any diminution of the consignment. The tobaccoes which composed the cargo mentioned in the bill of loading to Mess. Hastie and Jamieson, were the subject consigned, and whatever was exclusive thereof must be held the absolute property of the consigner, open to the legal execution of his lawful creditors.

1. Branch.
Ship's furniture, lumber, provisions, and freight.

The freight comes next to be considered, and must, it is apprehended, be held in the same situation with the ship, and the other particulars now mentioned.

The freight is the hire due to the owner of the ship for the transportation of the cargo. The cargo is considered as bailed for the freight, which is preferable to any other debt to which the goods laden are liable ; and the master of the vessel cannot be compelled to deliver the cargo, till he shall have received either payment of the

the freight or sufficient security for it. "Naulum conventum," says an approved writer upon this subject, "solvendum est infra dies octo decurrendos a die, quo navis pervenerit ad portum destinatum pro exoneratione mercium; et magister navis non potest compelli ad consignationem mercium, quousque naulum sibi non solvatur: immo antequam exonerentur merces, naulum est solvendum." And again, "Pro naulo sunt tacite hypothecata merces conductæ cum privilegio prælationis et anterioritatis omnibus aliis creditoribus domini illarum mercium. Retentio etiam conceditur magistro navis rerum vectarum, donec solvatur ei naulum. *Franc. Roccus, de Navibus et Naulo, p. 87. 90.*" And agreeable to these principles, your Lordships have found that there is a hypothec upon the loading of the ship, for the freight and other duties, similar to *invecta et illata* in urban tenements. December 1683, *Muir contra Lord Lyon*.

Freight, like any other debt, may, it is apprehended, be attached by the arrestment of the creditors of the owner of the ship; but there may in certain cases be some difficulty with regard to the proper person in whose hands the arrestment should be used. It is certain, that if the voyage is not performed, if the cargo is lost or the goods are not delivered, no freight is due; and therefore, till the actual delivery of the cargo, there is no debt which can be arrested in the hands of the consignee. Farther, it has been already shown, that the master of the vessel has a right to detain the cargo till payment of the freight; and therefore when the master happens to be at the same time owner of the vessel, it seems difficult to find out a proper method for his creditors to arrest the freight. An arrestment in his own hands would be inept, and in the hands of the person to whom the goods are consigned, it would be equally fruitless, as no debt is due till actual delivery.

Where however the master is not owner of the vessel, this difficulty seems to be removed, and it is apprehended that in his hands the freight may be properly arrested by the creditors of the owner. It is true indeed, that in this case, the master is not properly debtor for the freight; neither is he the creditor to whom the freight is properly due; but at the same time, he has a right of recovering the freight for the owner, and of detaining the cargo till that freight is paid. The cargo therefore, to the extent of the freight due, must be considered as remaining the absolute property of the owner of the ship, impossible to be withdrawn from him, without substituting in its place the freight itself.

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It is of no consequence, that freight is a debt, which, by the loss of the cargo may eventually never become due ; for it is well known that conditional debts are arrestable. Neither does it appear a circumstance of any weight, that the debt has never come into the possession of the person in whose hands the arrestment was used, for a partner's stock in a trading company has been found arrestable, although when the arrestments were laid in the hands of the company, their whole stock was either in the hands of their supercargoes at sea, or of their factors abroad. 19th November 1742 ; Neillson *contra* Rae. And besides, in the case of freight it may properly be considered as in the hands of the master, as there is a hypothec upon the cargo to the extent of it preferable to all other debts

In the present case, Archibald Dunlop was the owner of the ship, and David Conkie, in whose hands the arrestments were used, was the person hired by Dunlop to navigate the vessel and act as master. The freight therefore was due to Archibald Dunlop out of the goods consigned ; and these, according to the principles now laid down, were properly attached by the arrestments of the memorialist.

Two objections have been made to the memorialist's claim to the freight ; *1mo*, That it was not arrestable in the hands of Conkie the shipmaster ; and, *2do*, That it must be considered as a part of the cargo, to which the consignees have been found to have a preferable right. The first of these objections it is hoped has been sufficiently obviated by the observations already made by the memorialist.

As to the second objection, he must, in the *first* place, observe, That as the freight is a burden upon the cargo to be paid by the consignees, so when the extent of a consignment is considered, it is always (*navulo deducto*) with the deduction of the freight.

In the *next* place, it will be remembered, That the extent of a consignment must be determined by the terms of the bill of lading, the holding of which is considered as a symbolical possession of the cargo. So much however is freight considered as a necessary deduction from the cargo, that bills of lading always bear, that the cargo is to be delivered to certain persons, they paying freight for the same. Accordingly, in the present case, the terms of the bill of lading are, " That the cargo is shipped and is to be delivered in the like good " order and well conditioned at the port of Port-Glasgow, (the danger of the seas only excepted), unto Mess. Robert Hastie and James " Jamieson merchants in Glasgow, or their assigns, he or they pay-
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"ing freight for the said goods," &c. Thus, by this bill of loading, the freight is not made a part of the consignment, but, on the contrary, the right of the consignees is expressly burdened with the condition of their paying it. As the terms of the bill of loading must regulate the extent of the consignment, whatever is not included in it must be held, not a part of the consignment; and surely what is expressly excluded, can never be claimed by the consignees.

In the *third* place, it is to be observed, That Mess. Hastie and Jamieson themselves have in effect admitted the justice of the memorialist's claim. In their accompt-current with Archibald Dunlop, which is in process, and a copy of which is printed and annexed to this memorial, they have given Dunlop credit for the freight of the whole cargo aboard this vessel; and as your Lordships will observe, they have stated it as altogether distinct from the proceeds of the consignment, which plainly shows, that they themselves considered it as a clear and necessary deduction therefrom.

The freight, therefore, must, it is humbly apprehended, be considered as a necessary deduction from the consignment, and as properly and legally attached by the arrestments of the memorialist. It only remains to observe, that, besides the tobaccos consigned by Dunlop to Mess. Hastie and Jamieson, there were aboard this ship other tobaccos, not his property, consigned to different persons, but for the whole of which, freight was due to Dunlop as sole owner of the vessel. As to the freight due for the tobaccos, not the property of Dunlop, it is apprehended there cannot be the least doubt that it was properly affected by Mr Arthur's arrestments; and that, as Mess. Hastie and Jamieson recovered it, and have stated themselves in their accompt debtors for it to Dunlop, they must therefore be held accountable for it. As to the other, the memorialist has already endeavoured to show, that he has properly arrested it, and he hopes it is unnecessary to add any thing farther upon that head.

As the memorialist has thus a right, not only to the ship itself, but likewise to its furniture and lumber, the provisions aboard, and the freight of the cargo, he humbly apprehends, it must necessarily follow, that he is intitled to the interest due upon these several articles, from the time of their being received and having become due by Mess. Hastie and Jamieson to Archibald Dunlop. If he shall be found intitled to these articles themselves, he apprehends the interest due upon them must follow of course. Having arrested them, he comes in the place of Dunlop himself, and can claim every thing that Dunlop himself could have demanded. And therefore, upon the whole, of this branch of his argument, the memorialist humbly hopes
your

your Lordships will have no difficulty in finding him intitled to the several articles above mentioned, and that you will pronounce an interim-decreet for the balance which, in their accompt-current, Mess. Hastie and Jamieson have admitted to be due by them to Dunlop thereupon. In that accompt your Lordships will observe, that Mess. Hastie and Jamieson claim certain deductions from the freight, price of the ship, and other articles now under consideration, such as for the wages paid Captain Conkie and the sailors, insurance and commission upon the ship and freight, &c. How far these deductions are to be admitted will come to be more properly the subject of discussion when the vouchers thereof shall be produced ; and in the mean time the memorialist demands only a decreet for the sum of L. 1151 : 14 : 7 Sterling, which is the balance acknowledged to be due after these deductions.

Appendix
No. II.

The memorialist, has hitherto considered what of the subjects 2. Branch arrested are included in the bill of loading, which, as it has been Cargo. shown, is the first foundation of the *special property* of the consignees. The next object of inquiry is, how far the right of the consignees extends with regard to these subjects which are actually included in the bill of loading. The cargo, it has been shown, is the only subject contained in the bill of loading, and the extent of the right of the consignees, as it has been likewise shown, must be determined by the extent of the debt due to them by the consigner.

The judgment of the House of Lords has indeed declared in general, that the consignees have a *special property* in the cargo, preferable to the arrestments of the memorialist. But it is to be remarked, that the only point contended for by the consignees, and the only point under consideration of that very Honourable House, was, that consignments in payment of debt could not be disappointed by the arrestments of other creditors. It was never inquired into or considered how far Mess. Hastie and Jamieson were actually the creditors of Archibald Dunlop, at the time when the memorialist arrested this cargo. That was left to be the matter of after investigation and discussion before your Lordships. It was the general point which was alone the subject of dispute, and it was the general point alone which the judgment of the House of Lords determined.

The extent of their debt has now come to be the subject of investigation, and it has produced several questions which are to receive the determination of your Lordships.

There

There are three different ways in which Mess. Hastie and Jamieson have stated themselves as creditors of Dunlop, and upon which they claim a *special property* in this cargo; *1mo*, For the debts actually paid by them for Dunlop before the arrestment of the cargo; *2do*, The debts which they had not then paid, but for which they were then actually bound; and, *3tio*, The debts contracted by them on account of Dunlop, after the date of the arrestment.

As to the *first*, It is unquestionable that, to the extent of the sums in which they were actually in advance for Dunlop at the time of this arrestment, they have a *special property* in the consignment.

As to the *third*, The debts contracted by them posterior to the arrestments it is apprehended to be in like manner clear beyond all doubt, that the consignees have no right whatever to this consignment. The great end of the law is to secure these consignments to honest creditors who have fairly contracted upon the faith of them. But they cannot surely pretend to have become creditors upon the faith of a consignment, when the debts have been contracted after they knew of its being arrested. After knowing of the arrestment, they were in *mala fide* to contract debt upon the faith of that consignment, and they cannot be allowed by that means to disappoint the creditors who have arrested.

It is with regard to the *second* class that the only difficulty in this case occurs, which are the debts that at the date of the arrestments had not been paid by the consignees, but for which they were at that time actually bound. This class again may be subdivided into two branches; either, as they may be, *1mo*, debts paid by the consignees after the arrestment, but before they had received any other consignment than that in question; or, *2do*, debts paid after the arrestment, but not till other consignments besides that arrested had come into their possession from Dunlop. As to the first of these, the memorialist will not dispute the right of the consignees; and therefore the only question is with respect to the last.

As to these therefore, it is in the *first* place to be remarked, That the right of the consignees in the present case is in a great measure founded upon the terms of the contract between them and Dunlop the consigner. Upon the faith of receiving consignments in terms of that contract, they had made advances and had become bound for the prices of goods sent out by Dunlop. The question then is, If, at the time of this arrestment, Mess. Hastie and Jamieson were in such a manner creditors of Dunlop, as to claim this consignment in terms of their contract?

By

By that contract which is recited above at length, " the said
 " Archibald Dunlop binds and obliges him and his successors to re-
 " mit to the said Robert Hastie and James Jamieson, at Glas-
 " gow, the value of whatever goods shall be shipped by them
 " on his account, *so as they may be enabled to pay the value of the*
 " *said goods to the sellers or furnishers thereof, and that from time*
 " *to time, as the same shall become due :* And in case the said Archi-
 " bald Dunlop shall fail to make the foresaid remittances timeously,
 " *so as to discharge the prices of the goods to be sent out to him,*
 " *when the same fall due,* then he binds and obliges himself and his
 " forebears to pay to the saids Robert Hastie and James Jamieson,
 " their heirs, &c. the lawful annualrent of the price of the said
 " goods, and that *from the time the same shall become due to the*
 " *furnishers until payment.*" For the better understanding these
 terms of the contract, it is to be observed, that in carrying on the
 trade of sending out goods from any part of Britain to merchants in
 Virginia, and getting remitted cargoes of tobacco, &c. it is the u-
 niform practice for the factor at home to buy the goods at the cre-
 dit of twelve, sixteen, or eighteen months, in order that the merchant
 abroad may have time to dispose of them, and remit consignments
 to pay them as nearly as may be against the time the prices become
 due. Agreeable to this, by the contract now mentioned, Dunlop be-
 came bound to remit to the consignees cargoes so as to enable them
 to discharge the prices of the goods sent out to him, and that from
 time to time, as the same should become due to the furnishers thereof.

It is apprehended, that in examining the right of Mess. Hastie
 and Jamieson to any particular consignment, the extent of their *spe-*
cial property therein must be determined by the terms of that con-
 tract upon the faith of which they contracted. And here it is pro-
 per to consider what would be the right of these consignees in a que-
 sition with Archibald Dunlop himself. If Dunlop should desire to
 apply to other purposes as much of the consignment as he could
 consistently with the just claims of Hastie and Jamieson, in terms of
 their contract, it may be worth while to examine how far their claim
 might extend. In so far as they were actually then in advance for
 him, the matter is clear. But as to the debts in which they were only
 bound for him, it is apprehended he might justly maintain, that he
 was only bound to remit to them consignments against the time these
 debts became due ; that if he should fail to do so, he would unque-
 stionably be liable for such failure in terms of the contract, but
 that till these debts became due they had no claim upon him, and
 could not with any reason withhold from him his effects. If indeed

Dunlop was insolvent, they might perhaps have a right to retain the consignment as a security for the sums in which they were bound upon his account ; but if on the other hand he was in good circumstances, there could not be any pretext for keeping possession of his goods.

If this is clear, with respect to Dunlop himself, it must be still more so in the present competition with his creditors. They require not the consignees to give up their right in security, uncertain of receiving future consignments. The time is now long past since the debts in which they were bound for Dunlop became actually due; and against that time they did in fact receive other large and valuable consignments. The arrival and arrestment of the consignment in question happened in August 1765 ; the debts in which they were bound for Dunlop become actually payable in the course of 1766 or 1767 ; and by that time other large and valuable cargoes had been received from Dunlop, and particularly a cargo by a ship called the *Rae Galley*, amounting in value to upwards of L. 3000 Sterling. These consignments, posterior to that now in question, were plainly intended to discharge the prices of the goods which had been sent out to Dunlop in 1765, and for the prices of which Hastie and Jamieson stood bound at the date of the memorialist's arrestment. These were therefore the consignments in terms of the above-mentioned contract, and upon the faith of receiving which they had sent out to him the goods, for the prices of which they were bound when this consignment was attached. The only question then is, Are the consignees to apply the several cargoes from time to time consigned to them, according to the spirit and very words of their contract ? or, Are they intitled arbitrarily to apply them in any manner they please, either to gratify their own humour, or to serve the improper views and purposes of their constituent ?

Equity, however, it is humbly apprehended, will not permit a creditor to act in an arbitrary manner towards his co-creditors. In the case of a creditor infest in two different tenements for his security, and another creditor having an infestment on one of the tenements of a later date, if the preferable creditor chuse arbitrarily to draw his whole payment out of that subject in which the other creditor is infest, the latter for his relief is intitled to have the preferable security assigned to him. Thus your Lordships have decided in a variety of cases, collected in the Dictionary *voce* Debtor and Creditor. Vol. I. page 222, *et seq.*

The present case is infinitely stronger than that now mentioned. The right of the consignees is not constituted by an infestment or by
actual

actual delivery ; but it is a *special property* created from the necessity of the thing for the advantage of commerce. The interests of commerce, however, can never require that a creditor shall have it in his power to act arbitrarily towards his fellow-creditors, either to gratify his own humour, or to aid the fraudulent views of their common debtor. Your Lordships, therefore, will never surely extend this new creature of the law, this singular right of *special property*, farther than the interests of commerce shall absolutely require, nor will you support it when employed as a cover to authorise arbitrary and fraudulent proceedings.

The application of these principles to the present case is extremely obvious. When Mess. Hastie and Jamieson received from Dunlop other consignments to pay the debts in which they stood bound for him at the time of this arrestment, before these debts became actually payable, it is apprehended that they must apply these after-consignments in payment of these debts, and not the consignment now in question which arrived and was arrested by the memorialist long before these debts became due. The bill of lading in their possession must unquestionably give them a right to the consignment to the extent of their debt ; but the extent of their debt must be regulated by the terms of that contract upon the faith of which they contracted it ; and it has been shown, that according to the terms of that contract they could not claim this consignment for debts not due at the time of its arrival, nor due till other consignments came into their possession sufficient to pay these debts.

And therefore, upon the whole, the memorialist humbly hopes he has sufficiently shown, that the *special property* in the consignment in question can only be admitted to the extent of the sums actually advanced for them by Dunlop at the time of this arrestment, or for the debts in which they at that time stood bound for Dunlop, and did not receive from him after-consignments to enable them to pay.

Mess. Hastie and Jamieson, soon after the commencement of this process, exhibited an accompt-current betwixt them and Dunlop, beginning 10th August 1764, and ending 24th October 1765, by which they endeavoured to make it appear that at the date last mentioned, a balance remained due to them by Dunlop of no less than L. 1299 Sterling. It is unnecessary to trouble your Lordships at present with entering into a particular examination of this accompt, as
it

Appendix
No. I.

it is the general principles with regard to the method of accounting which are alone at present the subject of inquiry. A copy however of this account is printed and annexed to this memorial, for your Lordships perusal, and it may be proper to make a few general remarks upon it,

It may be examined either, *1mo*, At the date of the memorialist's arrestment, 26th August 1765, or, *2do*, At the date of the last article in the account, which is, 24th October 1765.

From comparing the accounts on both sides, at the date of the arrestment 26th August 1765, it appears that at that time Mess. Hastie and Jamieson owed a considerable balance to Dunlop.

Upon examining the account, however, from beginning to end, from 10th August 1764 to 24th October 1765, it appears, that Mess. Hastie and Jamieson, *1mo*, Charge Dunlop with cargoes of goods sent out to him in spring, summer, and harvest 1765, although the prices of these goods did not become due to the furnishers thereof till the middle and end of the year 1766. And, *2do*, They not only charge him with the prices of goods sent out before the date of the arrestment, although not due till long after, but farther, with the prices of goods purchased and sent out in September and October 1765, after the date of the arrestment in question. On the other hand, it is to be remarked, That while they have thus charged Dunlop in 1765 with debts not due till 1766, they have upon the opposite side of the account made this very consignment the last article, and have not thought proper to give him credit for the other valuable consignments which they received in the end of 1765 and beginning of 1766, long before the debts with which they have charged him became actually due.

This account, however, the memorialist has good reason to complain of, as altogether unfair and unjust. It has been shown, that, in a question with the arrester of this consignment, they have no right to take credit for the debts contracted after the date of the arrestment. It has been farther shown, that in the present case they have no right to take credit for debts in which they stood bound for Dunlop at the date of the arrestment, and which they received after-consignments to enable them to discharge. When therefore they exhibit an account charging Dunlop with these articles, they must at the same time, upon the other hand, give him credit for every remittance and every consignment which they received, till the time these debts become actually due. The memorialist has already mentioned,

mentioned, that besides other valuable consignments, Mess. Hastie and Jamieson, in the end of 1765, or very beginning of 1766, received from Dunlop a cargo, of value more than L. 3000 Sterling, by a vessel called the *Rae Galley*. This consignment was plainly, in the very terms of their contract, intended to discharge the debts soon to become due, and which they would most unjustly endeavour to throw a burden upon the consignment now in question, in order that they might thereby withdraw Dunlop's whole effects from the legal execution of his old creditors, and aid him in the most unjustifiable attempts to disappoint their payment.

Mess. Hastie and Jamieson therefore must, it is apprehended, exhibit a new accompt, in which they must upon the one side strike off all the debts contracted after the date of this arrestment, and while they charge Dunlop for the debts not due, but in which they then stood bound for him, they must on the other hand give him credit for all remittances and consignments which came into their possession, against the time these debts became actually due. When such an accompt shall be exhibited with all the vouchers thereof, a more accurate investigation of the particulars will be necessary: In the mean time enough has been said not only to show, that the present accompt is erroneous and unjust, but likewise to establish the general principles upon which an accompt must be made out.

The memorialist shall conclude with observing, that the present question is of considerable importance, not only to him, but to the country in general. A new and singular right of *special property* is established in the law of this country with respect to foreign consignments. It is repugnant to all the commonly received principles with respect to the transference of property; and it is *created* for the benefit and advantage of commerce. Great care should be had however, not to extend it farther than the interests of commerce may require.

In respect whereof, &c.

ROBERT CULLEN.

Date	Description	Debit (£ s d)	Credit (£ s d)	Balance (£ s d)
1794.				
Aug. 10	To Smithfield Company, <i>per</i> bill, payable 9th December 1765,		L. 73 5 10	
	To ditto, <i>per</i> ditto, 26th July 1765,		61 18 0	
	To ditto, ditto, ditto,		74 5 2	
	To Colin Dunlop, Alexander Houston, and Company, <i>per</i> our bill, due 2d February 1765,		200 0 0	
	To cash advanced him this date,		20 0 0	
	To Andrew Buchanan and Company, <i>per</i> our bill, in five weeks,		96 7 6	
15.	To cash advanced him in Greenock,		5 0 0	
	To ditto paid part entry of goods <i>per</i> Betsey,		0 17 4	
	To ditto paid Mr Bairds and Company,		1 6 0	
Nov. 14.	To paid Miss Dunlop half year's annuity,		12 10 0	
1765.				
Feb. 13.	To goods shipped <i>per</i> Elliot, Captain Ferrie, with charges,		241 15 1 1/2	
	To cash for gabertage, boxes, &c.		0 14 2	
May 7.	To interest on Colin Dunlop and Alexander Houston's bill, L. 200,		0 16 8	
	To discount on bill, William Dunlop on Colin Dunlop and Son, for L. 50,		0 16 0	
9.	To postage of letter from Bristol,		0 1 0	
16.	To goods shipped <i>per</i> the Peggy, with charges,		432 17 2	
	To cash paid gabertage,		0 12 11	
21.	To ditto paid William Sommervell an account,		11 1 2	
	To ditto paid Walker and Millikan ditto,		1 6 10	
April 2.	To ditto paid entry and charges goods <i>per</i> Peggy,		1 8 8	
	To ditto paid postages,		0 3 9	
29.	To ditto paid Smithfield Company interest on bill due 26th July 1765, and discount on William Dunlop's bill,		1 12 6	
May 5.	To ditto paid William McKenzie and Company <i>per</i> bill,		9 17 5	
	To ditto, ditto, <i>per</i> ditto,		36 7 6	
23.	To discount given Colin Dunlop and Son on tobacco sold them,		1 4 5	
	To cash paid John Douglas and Company <i>per</i> bill,		66 4 4	
	To ditto interest on ditto,		2 15 1 1/2	
	To ditto paid John Gilmour <i>per</i> ditto,		25 14 0	
	To ditto paid interest on ditto,		0 6 0	
24.	To cash paid Miss Dunlop for half a year's annuity,		12 10 0	
June 19.	To ditto paid discount on Colin Dunlop's bill of L. 100 for tobacco, <i>per</i> Bogle,		0 13 8	
	To ditto paid Clayton in part of acceptance due him <i>per</i> receipt on back of bill,		25 0 0	
	To ditto paid George Buchanan <i>per</i> bill,		20 19 6	
	To ditto for interest on ditto,		0 18 6	
	To ditto paid Thomas Blackstock <i>per</i> account discharged,		9 17 0	
	To goods shipped <i>per</i> Virginia and Mally, with insurance and commission,		1817 17 5	
	To ditto, ditto for Baird and Dunlop, with charges,		479 2 1	
July 16.	To portage and postages,		0 8 8 1/2	
	To cash paid Miss Dunlop his sisters, <i>per</i> order,	L. 25 0 0		
	To ditto paid James Paton in part of his bill,	30 0 0		
		L. 55 10 0		
	Creditor, bullion received <i>per</i> Betsey,	46 2 0		
			8 18 0	
August.	To cash paid for insurance on goods <i>per</i> Betsey, August 1764,		40 7 0	
	To paid Samuel Forrester's bill, and interest,		21 8 6	
	To ditto paid John Hamilton, short charged in policy,		0 2 6	
	To cash paid Archibald and Gilbert Hamiltons for bills,	L. 537 16 9		
	To interest on above bill, 23d December,	27 11 7		
			565 8 4	
	To cash paid Patrick Telfer and Company for his bill,	L. 543 15 4		
	To ditto, paid interest on ditto,	23 7 11		
			567 3 3	
October 5.	To goods shipped <i>per</i> the Speirs, with charges,		179 6 0	
	To cash paid loosing arrestment, and expences at Edinburgh,		3 14 3	
	To cash paid Miss Dunlop's one year's annuity due Whitunday 1766,		25 0 0	
		L. 5159 19 3 1/2		

in Virginia, with HASTIE and JAMIESON Merchants in Glasgow,

Gr

1764.					
Aug. 13.	By cash from Baird and Dunlop,	—	—	L.	45 0 0
Sept. 13.	By cash for bounty on linens, <i>per</i> Betsey,	—	—		82 17 5½
1765.					
Jan. 3.	By ditto for order on Mr Maxwell,	—	—		5 0 0
	By ditto, bounty on linens <i>per</i> Mally,	—	—		1 7 0
Feb. 13.	By ditto, debenture on leather, <i>per</i> the Betsey,	—	—		10 15 10
March 7.	By ditto for Gavin Lawson's bill on Colin Dunlop and Son,				150 0 0
	By ditto for Andrew Mackie's bill on James Buchanan and Co. London,				73 16 0
	By exchange and interest on ditto,	—	—		1 1 8
April 2.	By cash <i>per</i> bounty on linens, <i>per</i> Peggy,	—	—		14 9 0
28.	By ditto, <i>per</i> Elliot,	—	—		23 13 4
29.	By ditto for William Dunlop's bill on Colin Dunlop and Son,				50 0 0
July 3.	By sales of 50 hogheads tobacco, <i>per</i> Bogle, neat proceeds,				239 7 9
	By David Hunter's bill on William Dunlop,	—	—		11 2 9
	By cash for bounty on linens, <i>per</i> Virginia,	—	—		54 13 2
Sept. 23.	By neat proceeds of 288 hogheads tobacco, <i>per</i> Betsey, payable 23d December 1765,	—	—		1867 15 9
	By his half of profits on consignments, <i>per</i> agreement,				37 2 9
	By John Hamilton's overcharge on Betsey's policy,				0 1 6
	By bounty on Baird and Dunlop's goods, <i>per</i> Virginia,				27 0 0
Sept. 6.	By freight of 435 hogheads tobacco; <i>per</i> Betsey,	L.	741 18 0		
	By half of the lumber,	—	42 5 3		
Oct. 23.	By six barrels pork sold from ship's provisions,		11 4 0		
	By Oswald and Dalziel, for value of the ship, sold at public roup, payable in six months,	—	600 0 0		
			<u>L. 1395 7 3</u>		
	To insurance of L. 800 on ship home,	L.	20 0 0		
	To ditto of L. 500 on freight,	—	15 3 6		
	To Captain Conkie's wages,	—	25 0 0		
	To his privilege,	—	6 10 0		
	To failors wages, &c. <i>per</i> accompt,		128 0 6		
	To cash paid R. Montgomery failor,		0 10 6		
	To charges at roup, and clerk,	—	4 9 9½		
	To commissions of sale of ship and freight,		22 12 4½		
	To charges in the customhouse,	—	2 15 0		
	To order in favour of Capt Conkie,		18 11 0		
			<u>243 12 8</u>		
	By five hundred weight of biscuit, left out of ship Betsey, 16 s.				1151 14 7
	By balance due Hastie and Jamieson,	—	—		4 0 0
					<u>1339 0 9</u>
				L.	5159 19 3½

Glasgow, 24th October 1766. Errors excepted.
Hastie and Jamieson.

No. II.

EXCERPT from Mess. HASTIE and JAMIESON's Accompt-current
with ARCHIBALD DUNLOP, so far as respects the proceeds of
ship and freight.

1765.

Sept. 6.	By freight of 435 hogheads tobacco and skins, <i>per</i> Betsey, —	L. 741 18 0
	By half of the lumber, —	42 5 3
Oct. 23.	By six barrels pork sold from ship's provi- sions, —	11 4 0
	By Oswald and Dalziel, for value of the ship, sold at public roup, payable in six months, —	600 0 0
		L. 1395 7 3
	To insurance of L. 800 on ship home, —	L. 20 0 0
	To ditto of L. 500 on freight, —	15 3 6
	To Captain Conkie's wages, —	25 0 0
	To his privilege, —	6 10 0
	To sailors wages, &c. <i>per</i> ac- compt, —	128 0 6
	To cash paid Robert Mont- gomery sailer, —	0 10 6
	To charges at roup, and clerk, —	4 9 9½
	To commissions of sale of ship and freight, —	22 12 4½
	To charges in customhouse, —	2 15 0
	To order in favour of Captain Conkie, —	18 11 0
		243 12 8
		L. 1151 14 7
	By five hundred weight of biscuit left out of ship Betsey, at 16 s. —	4 0 0
		L. 1155 14 7

No.

No. III.

ABSTRACT of the value and neat proceeds of the ship the BETSEY, Captain DAVID CONKIE Commander, belonging to ARCHIBALD DUNLOP Merchant in Virginia, and the cargo taken from the Account-current betwixt the said ARCHIBALD DUNLOP and Messrs. HASTIE and JAMIESON, produced in the process of multiple-pounding, raised by DAVID CONKIE the shipmaster and them, against ROBERT ARTHUR and others.

To the neat proceeds of 288 hogsheads tobacco, payable 22d December 1765,	—	L. 1877 15 9
To which add freight, per Archibald Dnnlop's account,	—	460 16 0
		L. 2338 11 9

Freight due by others, per ditto account,	—	L. 281 2 0
Proceeds of lumber,	—	42 5 3
Proceeds of pork,	—	11 4 0
Proceeds of the ship,	—	600 0 0
Proceeds of biscuit,	—	4 0 0
		L. 938 11 3

From which deduce the premium of insurance, and mens wages and commission on the sale of the ship, &c. per Hastie and Jamieson's account,	—	243 12 8
		694 18 7

The neat sum for which Captain Conkie is accountable, as being in his possession when the arrests were loosed,	—	L. 3033 10 4
Deduce a mistake of L. 10 too much stated on the first article,	—	10 0 0
		L. 3023 10 4

Ex. G. m. B.
3/17/02.